

1 This matter came on for hearing on December 17, 2015 at 11 a.m., in
 2 Courtroom 3 of the above-captioned Court on the parties' Joint Motion for
 3 Hearing on Data Issues re Class Action Settlement.

4 The Court, having fully reviewed the Joint Motion and Joint Brief
 5 submitted by the parties, and having been advised of the adjustment to the
 6 settlement agreement which the parties negotiated, and the amendment to the
 7 Stipulation of Class Action Settlement, and having carefully analyzed the
 8 Amendment to the Stipulation of Settlement, **THE COURT HEREBY MAKES**
 9 **THE FOLLOWING DETERMINATIONS AND ORDERS:**

10 1. The Court finds on a preliminary basis that the Stipulation of
 11 Settlement filed in this action on July 14, 2015, as amended by the Amendment
 12 to the Stipulation of Settlement filed in this action on December 16, 2015, both
 13 of which are incorporated herein by this reference in full and made a part of this
 14 Order of Preliminary Approval, appears to be within the range of reasonableness
 15 of a settlement which could ultimately be given final approval by this Court.

16 2. It further appears to the Court on a preliminary basis that: (a) the
 17 proposed Settlement amount, as amended, is fair and reasonable to the
 18 Settlement Class Members when balanced against the probable outcome of
 19 further litigation in relation to certification of the class, liability, damages issues
 20 and potential appeals; (b) significant investigation, formal and informal
 21 discovery, research, and litigation have been conducted such that counsel for the
 22 Parties at this time are able to reasonably evaluate their respective positions; (c)
 23 settlement at this time will avoid substantial costs, delay and risks that would be
 24 presented by the further prosecution of the litigation; and (d) the proposed
 25 Settlement, as amended, has been reached as the result of intensive, serious and
 26 non-collusive negotiations between the Parties facilitated by an experienced
 27 wage and hour mediator and by further good faith, arm's length negotiations

1 between the parties regarding an amendment to the Settlement in light of certain
 2 newly discovered data which was brought to the Court's attention.

3 3. Accordingly, good cause appearing, the court extends its previous
 4 Preliminary Approval of Class Action Settlement to the Settlement as amended,
 5 and as a part of said preliminary approval, the Court hereby accepts and
 6 incorporates the Stipulation of Settlement, as amended.

7 4. The Court further finds that the proposed class notice, "Notice of
 8 Class Action Settlement" and "Claim Form" which are attached to this order as
 9 Exhibits "A" and "B", respectively, fairly, plainly and adequately advises
 10 Settlement Class Members of (a) the pendency of the Class Action, (b)
 11 preliminary Court approval of the proposed Settlement; (c) the date of the Final
 12 Fairness / Approval Hearing; (d) the terms of the proposed Settlement and the
 13 benefits available to Settlement Class Members thereunder, (e) the right to make
 14 a claim for his or her proportional share of the settlement proceeds and
 15 procedure and deadline for doing so, (f) the amount he or she can expect to
 16 receive if they choose to participate in the Settlement; (g) the right to object to
 17 the settlement and procedure and deadline for doing so; (h) the right to request
 18 exclusion and procedure and deadline for doing so; and (i) the right to file
 19 documentation in support of or in opposition to, and to appear in connection
 20 with, said hearing. The Court further finds that the Notice and Claim Form
 21 clearly comport with all constitutional requirements, including those of due
 22 process.

23 5. Accordingly, good cause appearing, the Court hereby APPROVES
 24 the Notice of Class Action Settlement and the Claim Form.

25 6. The Court further finds that the mailing to the last known address of
 26 Settlement Class Members as specifically described within the Stipulation of
 27 Settlement, with measures taken for verification of an address and skip tracing

1 set forth therein, and, in the case of mailings returned as undeliverable with no
2 such mailing resending such mailings to the current address listed with the
3 National Change of Address Database or obtained as a result of skip-tracing,
4 constitutes an effective method of notifying Settlement Class Members of their
5 rights with respect to the class action and the settlement. Accordingly, it is
6 hereby ORDERED that:

7 a. On or before **December 28, 2015**, Simpluris, Inc., the
8 previously appointed Settlement Administrator (“Settlement
9 Administrator”) shall mail the Notice of Settlement, the Claims Form, and
10 the Exclusion Letter, attached as Exhibit “H” to this order, (collectively
11 “Notice Packet”) via First-Class mail using the United States Postal
12 Service (“U.S. Postal Service”) to the most recent address known for each
13 Settlement Class Member, employing the procedures specified in the
14 Court’s September 28, 2015 Order.

15 b. The Settlement Administrator shall also set up and maintain a
16 website containing: (1) the information about the Settlement set forth in
17 Exhibit “C” to this order; (2) links to the following documents: (i) Notice
18 of Class Action Settlement; (ii) Claim Form; (iii) Stipulation of
19 Settlement; and (iv) this Order Granting Preliminary Approval of Class
20 Action Settlement; (3) a link to an online version of the Claim Form
21 containing the information set forth in Exhibit “D” to this order and which
22 permits class members to complete and submit their claim forms to the
23 Settlement Administrator online.

24 c. Defendants shall post information about the proposed
25 Settlement and claims process at the California Outback Restaurants in the
26 form attached as Exhibit “F” to the Stipulation of Settlement, and will
27 make generic request for claims forms available in the California Outback

1 Restaurants in the form attached as Exhibit "G" to the Stipulation of
 2 Settlement readily available to Settlement Class Members upon request at
 3 each of the California Outback restaurants.

4 d. On or before **January 11, 2016**, [31 days prior to the Claims
 5 deadline], Plaintiffs' counsel shall file a motion for attorney's fees, setting
 6 such motion for hearing on the same date and time as the Final Fairness /
 7 Approval Hearing.

8 e. On or before **January 22, 2016**, [20 days prior to the Claims
 9 deadline], the Settlement Administrator shall mail a postcard to all
 10 members of the Settlement Class, who have not by that date, returned a
 11 Claim Form, or a request to be excluded, of the deadline to submit a Claim
 12 Form.

13 f. On or before **February 11, 2016**, [45 days following initial
 14 mailing of the Class Notice], Claim Forms must be postmarked and
 15 returned to the Settlement Administrator.

16 g. On or before **February 11, 2016**, [45 days following initial
 17 mailing of the Class Notice], any Class Member who wishes to dispute or
 18 challenge the employment information upon which their payment is based,
 19 must be postmarked and returned to the Settlement Administrator.

20 h. On or before **February 11, 2016**, [45 days following the
 21 initial mailing of the Class Notice] objections to the Settlement in the
 22 manner set forth in the Notice of Class Settlement must be postmarked and
 23 returned to the Settlement Administrator and also served on Counsel for
 24 the Parties. Class Members who have not timely filed and/or served
 25 written objections in the manner specified in the Notice of Class Action
 26 Settlement shall be deemed to have waived any objections, shall be

1 foreclosed from making any objection to the settlement, and shall not be
2 heard at the Final Approval Hearing.

3 i. On or before **February 11, 2016** , [45 days following the
4 initial mailing of the Class Notice], where a Class Member has submitted
5 an objection submitted in accordance with the Notice of Class Settlement
6 and the preceding paragraph, such a Class Member may also be heard at
7 the Final Approval Hearing if they have provide written notice of their
8 intention to appear at the Final Approval Hearing which is postmarked and
9 returned to the Settlement Administrator and served on Counsel for the
10 Parties.

11 7. IT IS FURTHER ORDERED that the Final Fairness / Approval
12 Hearing and the hearing on Plaintiffs' Attorneys' Motion for an Award of
13 Attorneys' Fees shall be held before the undersigned on **April 7, 2016**, at 11:00
14 a.m., in Courtroom 4 of the United States District Court for the Northern District of
15 California, 1301 Clay Street, 3rd Floor, Oakland, CA 94612 to consider the
16 fairness, adequacy and reasonableness of the proposed Settlement preliminarily
17 approved by this Order of Preliminary Approval, and to consider the requests for
18 the Class Representative's Service Payments, Settlement Administration
19 payment and for Class Counsel's Attorneys' fees and costs payments. All briefs
20 and materials in support of an Order of Granting Final Approval and Entering
21 Judgment shall be filed with this Court on or before **March 2, 2016**.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

2153689.2
24158643v1

8. IT IS FURTHER ORDERED that the Court's September 28, 2015
Order granting Preliminary Approval of Class Action Settlement shall remain in
full force and effect, except as expressly modified by this order.

IT IS SO ORDERED.

Dated: December 21, 2015

Kandis Westmore
KANDIS A. WESTMORE
United States Magistrate Judge